IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6471 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKERABHAIRPRAJAPATI - Petitioner(s)

Versus

BHILALBHAIBPATEL & 3 - Respondent(s)

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Appearance :

MR PC MASTER for Petitioner(s) : 1,
None for Respondent(s) : 1 - 3.
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by

the Additional Chief Secretary, Revenue Department, State of Gujarat dated 24.4.89 passed in Revision Application No. SRD/CTS/1/89 in allowing the said Revision Application and by quashing and setting aside the order passed by the City Survey Superintendent dated 15.4.86 as well as the order passed by the Assistant Collector, dated 2.6.87 as well as the order passed by the Collector, Vadodara dated 25.8.88 in confirming the order passed by the City Survey Superintendent dated 15.4.86.

2. The dispute is with regard to land admeasuring 55-12-50 sq. mts. from the land bearing Survey No.1621 situated at village Chhani, Taluka & District Vadodara and after holding necessary inquiry the City Survey Superintendent held that the aforesaid land in question is of the ownership of the petitioner except some portion of the land which is coming under the road. Being aggrieved and dissatisfied with the order passed by the City Survey Superintendent, Vadodara dated 15.4.86, the respondent No.1 preferred the CTS appeal No.128/86 before the Additional Collector, Vadodara and the Additional Collector, Vadodara by order dated 2.6.87 dismissed the said appeal against which the respondent No.1 preferred Revision Application being Revision Application No. CTS/RA/16/88 before the Collector, Vadodara which also

came to be dismissed by the Collector, Vadodara by its order dated 25.8.88. Being aggrieved and dissatisfied with the order passed by the Collector, Vadodara dated 25.8.88, the respondent No.1 preferred Revision Application before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat who by its judgment and order dated 24.4.89 allowed the said revision application quashing and setting aside the aforesaid three orders and declaring the aforesaid land in question of the government. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 24.4.89 passed in Revision Application No.SRD 1/89, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Number of submissions have been made on behalf of the petitioner on the merits of the matter. However, it is submitted on behalf of the petitioner that the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 24.4.89 is passed without giving an opportunity of hearing to the petitioner and in fact the petitioner was not heard and even the petitioner did not receive any

Notice from the Secretary (Appeals), Revenue Department, State of Gujarat. As such, nothing is on record to controvert the same and there is no counter filed by the respondents, more particularly, on behalf of the respondent No.4. Under the circumstances, without going into the legality and validity of the impugned order on merits, only on the ground that since the impugned judgment and order has been passed without giving an opportunity to the petitioner, the same requires to be quashed and set aside and the matter is required to be remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat for deciding the same afresh in accordance with law and on merits after giving an opportunity to all the concerned parties.

4. For the reasons stated above, the petition succeeds in part. The judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 24.4.89 passed in Revision Application No. SRD/CTS/1/89 is hereby quashed and set aside and the matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat for deciding the same afresh in accordance with law and on merits after giving an opportunity of hearing to all the concerned parties.

Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

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